THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24351 OF 2005

DATED:15.11.2005

Between:

Mukesh Agarwal and another

…Petitioners

And

Assistant City Planner,

Cricle No.I, Municipal Corporation of Hyderabad

Sardar Mahal, Charminar, Hyderabad and another

…Respondents

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ORDER:

The petitioners are joint owners of premises No.18-13-4/3, situated at Chandrayanagutta, Hyderabad. The respondent sent a communication on 12.8.2005 to first respondent. The same is self-explanatory and reads as under.

> With reference to the subject cited, I am herewith enclosing a copy of the plan showing the premises bearing No.18-13-413 at Chandrayangutta which is getting affected under road for proposed construction of flyover of Chandrayangutta, Hyderabad, to be widened to 80'.00" as per Z.D.P. and approved R.D.P.

> This is one of the important road for road widening in the localities to avoid heavy traffic congestion on this road. Municipal Corporation of Hyderabad is taking up the work relating to widening of this road on TOP PRIORITY BASIS. An area to the extent of 1114.91 sq.yards from your property bearing No.18-13-4/3 situated at Chandrayangutta is affected under the proposed road widening.
>
> You are requested to hand over the possession of the said affected portion of your property to the MCH and give the consent in the public interest and MCH will arrange the structure compensation as per R & B schedule rates, and in lieu of the land value, relaxation in addition to FSI as per the G.O.Ms.No.483 MA dt.24.05.1998 and G.O.Ms.No.423 MA dt.31.07.1998 will be considered as per under Section 428 & 433 of the HMC Act 1955 as per rules.

Aggrieved by the above communication, the Writ Petition is filed before this Court. A reading of the above communication would show that the Municipal Corporation of Hyderabad (MCH) sought consent of the owner for advance possession in larger public interest. It does not, however, mean that in the event of owner of the property not willing to give consent the respondent MCH would resort to high-handed action. In such case, the MCH has to necessarily resort to provisions of Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for short, the Act). In **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advance possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

Learned Standing Counsel for MCH submits that if the land owner is not agreed under private negotiations, land acquisition proposals will be taken up as per the Land Acquisition Act, 1894 (LA Act). Therefore, the Writ Petition is misconceived. If the petitioners are not given their consent, it is always open to MCH to initiate action under Section 147 of the Act and acquire the property of the petitioners. In this case, the petitioners have allegedly not given their willingness/consent to cooperate with the MCH for the road widening project. Needless to mention that Corporation has to initiate action under the provisions of LA Act. Till then, the petitioners cannot be deprived of their right to enjoy the property, nor the MCH can demolish the structures for the purpose of road widening.

The Writ Petition with the above observations is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

15.11.2005

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